

1 **UNITED STATES DISTRICT COURT**
2 **FOR THE**
3 **DISTRICT OF MASSACHUSETTS**

4 MARICIA O'CONNOR,
5 Plaintiff,

6 v.

7 CAR AND ASSOCIATES,
8 Defendant.

Civil Action No. _____

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

(Unlawful Debt Collection Practices)

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10 **COMPLAINT**

11 MARICIA O'CONNOR ("Plaintiff"), by her attorneys, KIMMEL &
12 SILVERMAN, P.C., alleges the following against CAR AND ASSOCIATES,
13 ("Defendant"):

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15 **INTRODUCTION**

16 1. Plaintiff's Complaint is based on the Fair Debt Collection Practices
17 Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

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20 **JURISDICTION AND VENUE**

21 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d),
22 which states that such actions may be brought and heard before "any appropriate
23 United States district court without regard to the amount in controversy," and 28
24 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising
25 under the laws of the United States.

1 3. Defendant conducts business in the state of Massachusetts and
2 therefore, personal jurisdiction is established.

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4 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

5 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and
6 2202.

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8 **PARTIES**

9 6. Plaintiff is a natural person residing in Fitchburg, Massachusetts.

10 7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §
11 1692a(3).

12 8. Defendant is a debt collection company doing business in
13 Massachusetts and having its principal place of business at 5165 Broadway Suite
14 253, in Depew, New York, 14043.

15 9. Defendant is a debt collector as that term is defined by 15 U.S.C. §
16 1692a(6), and sought to collect a consumer debt from Plaintiff.

17 10. Defendant acted through its agents, employees, officers, members,
18 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
19 representatives, and insurers.
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PRELIMINARY STATEMENT

11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute that prohibits a catalog of activities in connection with the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or unconscionable conduct, both generally and in a specific list of disapproved practices.

12. In particular, the FDCPA broadly enumerates several practices considered contrary to its stated purpose, and forbids debt collectors from taking such action. The substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. §

1 1692f. The FDCPA is designed to protect consumers from unscrupulous
2 collectors, whether or not there exists a valid debt, broadly prohibits unfair or
3 unconscionable collection methods, conduct which harasses, oppresses or abuses
4 any debtor, and any false, deceptive or misleading statements in connection with
5 the collection of a debt.
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7 13. In enacting the FDCPA, the United States Congress found that
8 “[t]here is abundant evidence of the use of abusive, deceptive, and unfair debt
9 collection practices by many debt collectors,” which “contribute to the number of
10 personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of
11 individual privacy.” 15 U.S.C. § 1692a. Congress additionally found existing
12 laws and procedures for redressing debt collection injuries to be inadequate to
13 protect consumers. 15 U.S.C. § 1692b.
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15 14. Congress enacted the FDCPA to regulate the collection of consumer
16 debts by debt collectors. The express purposes of the FDCPA are to “eliminate
17 abusive debt collection practices by debt collectors, to insure that debt collectors
18 who refrain from using abusive debt collection practices are not competitively
19 disadvantaged, and to promote consistent State action to protect consumers against
20 debt collection abuses.” 15 U.S.C. § 1692e.
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FACTUAL ALLEGATIONS

15. At all pertinent times hereto, Defendant was allegedly hired to collect a debt relating to a payday loan.

16. The alleged debt at issue arose out of transactions that were primarily for personal, family or household, purposes.

17. On or about June 30, 2009, Defendant began constantly and continuously placed harassing and abusive collection calls to Plaintiff seeking and demanding payment for an alleged consumer debt.

18. Defendant communicated, by telephone, with Plaintiff with such frequency as to be unreasonable and to constitute harassment to Plaintiff under the circumstances.

19. Specifically, Defendant contacted Plaintiff telephonically on average three (3) times a day between June 30, 2009, and July 22, 2009.

20. Several times when Defendant contacted Plaintiff, Defendant's representative told Plaintiff that it was calling from an attorney's office.

21. Defendant threatened Plaintiff that she would commit a serious offense if she did not pay the alleged debt and told her that nonpayment of the alleged debt was a criminal offense.

1 22. Plaintiff disputed the debt and questioned Defendant regarding the
2 amount of the alleged debt; however, Defendant would not explain to Plaintiff how
3 it calculated the amount of the alleged debt.
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5 23. Defendant told Plaintiff that it would take her to court if she did not
6 pay the alleged debt.
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8 24. Defendant threatened Plaintiff that it would put the alleged debt on
9 her credit report; however, when Plaintiff viewed her credit report, the debt did not
10 appear on it.
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12 25. Defendant's calls to Plaintiff were disturbing, harassing, and
13 misleading, and made Plaintiff feel wary about answering the telephone.
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15 **CONSTRUCTION OF APPLICABLE LAW**

16 26. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry,
17 deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes
18 strict liability, a consumer need not show intentional conduct by the debt collector
19 to be entitled to damages." Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996);
20 see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding
21 unintentional misrepresentation of debt collector's legal status violated FDCPA);
22 Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).
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1 27. The FDCPA is a remedial statute, and therefore must be construed
2 liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235
3 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts
4 interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d
5 1162 (9th Cir. 2006). “Because the FDCPA, like the Truth in Lending Act (TILA)
6 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be construed liberally in
7 favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).
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9 28. The FDCPA is to be interpreted in accordance with the “least
10 sophisticated” consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168
11 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v.
12 Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA
13 was not “made for the protection of experts, but for the public - that vast multitude
14 which includes the ignorant, the unthinking, and the credulous, and the fact that a
15 false statement may be obviously false to those who are trained and experienced
16 does not change its character, nor take away its power to deceive others less
17 experienced.” Id. The least sophisticated consumer standard serves a dual
18 purpose in that it ensures protection of all consumers, even naive and trusting,
19 against deceptive collection practices, and protects collectors against liability for
20 bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at
21 1318.
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COUNT I
DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES
ACT

29. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or more of the following ways:

- i. Engaging in conduct the natural consequence of which was to harass, oppress, or abuse Plaintiff with the collection of a debt, specifically repeatedly contacting Plaintiff on her telephone, in violation of 15 U.S.C. § 1692d;
- ii. Causing a telephone to ring and engaging Plaintiff in telephone conversations repeatedly and continuously with the intent to annoy, abuse, and harass her, in violation of 15 U.S.C. § 1692d(5);
- iii. Using false, deceptive or misleading representations or means in connection with the collection of any debt, in violation of 15 U.S.C. §§ 1692e and 1692e(10);
- iv. Falsely representing or implicating that Plaintiff committed any crime or other conduct in order to disgrace Plaintiff, specifically telling Plaintiff that nonpayment of a debt is a criminal offense, in violation of 15 U.S.C. § 1692e(7);

- v. Threatening to communicate to any person credit information which is known or should be known to be false, in violation of 15 U.S.C. § 1692e(8);
- vi. Using unfair or unconscionable means to collect or attempt to collect any debt, in violation of 15 U.S.C. § 1692f; and
- vii. By acting in an otherwise deceptive, unfair and unconscionable manner and failing to comply with the FDCPA.

WHEREFORE, Plaintiff, MARICIA O'CONNOR, respectfully prays for a judgment as follows:

- a. All actual compensatory damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
- b. Statutory damages of \$1,000.00 for each violation of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- c. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
- d. Any other relief deemed appropriate by this Honorable Court.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, MARICIA O'CONNOR, demands
a jury trial in this case.

RESPECTFULLY SUBMITTED,

DATED: April 12, 2010

KIMMEL & SILVERMAN, P.C..

By: /s/ Craig Thor Kimmel

Craig Thor Kimmel

Attorney ID # 57100

Kimmel & Silverman, P.C.

30 E. Butler Pike

Ambler, PA 19002

Phone: (215) 540-8888

Fax: (215) 540-8817

Email: kimmel@creditlaw.com